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April 7, 1998

The Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
Committee on Government Reform
and Oversight
U. S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: Proposed Revisions to HR 22

Dear Congressman McHugh:

This is in response to your letter dated February 27, 1998, soliciting formal comments and recommendations on the proposed revisions to HR 22, The Postal Reform Act of 1997. I would like to thank you for the opportunity to comment on the proposed revisions. UPS looks forward to working with you and your staff in the coming months on this very important issue.

The attached comments are based on the proposed revisions to HR 22. UPS would like the opportunity to comment on the legislative language when it is made available. Thank you for your hard work and dedication to postal reform.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Churchill".

Kenneth P. Churchill
Vice President
Corporate Public Affairs

Attachment

UNITED PARCEL SERVICE
Comments on the Proposed Revisions to
The Postal Reform Act of 1996

April 7, 1998

Introduction

The hybrid nature of the United States Postal Service -- its public service mandate and powers as a government agency providing universal letter mail service combined with its ability to engage in commercial activities -- has led it to compete unfairly with the private sector. This action is a fundamental distortion of the competitive marketplace and has caused the Postal Service to stray from its mission. This hybrid status permits competitive activities to take advantage of government resources and powers, diverting them from public use.

United Parcel Service (UPS) believes that the Postal Service, an executive branch government entity, with all its special privileges, should not be allowed to compete where the public is already well-served by the private sector. We understand that to bring this principle to reality is a long term effort, with many transitional challenges. But that objective must be pursued nonetheless.

The proposed revisions to HR 22 contain many clearly identifiable and unprecedented measures for treating the Postal Service as a government agency with regards to its monopoly mail service, and requiring the Postal Service to bear the same private sector obligations as private enterprise when the Postal Service engages in competitive activities. This is a first and major step towards untangling the direct and indirect subsidies and abuses that arise when public entities enter private markets.

The proposed revisions acknowledge the need for proper separation of public governmental service and private commercial activities. Many provisions of the proposed revision present a balanced approach to allowing the Postal Service to be more like a private business when it competes against private enterprise in the marketplace, and alternatively more like a government agency when it functions as provider of the monopoly letter mail service. However, UPS urges further separation and clarification of the distinction between postal and non-postal activities.

UPS supports the steps being taken by the Chairman of the Subcommittee. In some cases, as the following comments indicate, UPS may recommend a different approach, but in all cases we concur and support the fundamental principle being advanced by this Subcommittee in this Congress.

Section-by-Section Comments

TITLE I

Section 101, 102

UPS opposes changing the name of the Postal Service Board of Governors to the U.S. Postal Service Board of Directors and the name of the Postmaster General to include Chief Executive Officer. The Postal Service is a government agency and this fact ought to be reflected in the title of its governing body and the agency's head. While the Postal Service wants to be thought of as a business, it is first and foremost a government entity. Therefore, the name of its governing body should reflect its mission.

Section 103

As revised, HR 22 would enhance the powers of the Postal Rate Commission (PRC), and thus appropriately changes the name to the Postal Regulatory Commission. UPS supports this proposal in that it reflects the added responsibility, authority and role of the PRC. In particular, increasing the power of the PRC to obtain **vital** information from the Postal Service is essential for ensuring a more level playing field between the Postal Service and private sector competitors.

UPS also supports the Presidential appointment of the Postal Inspector General after grandfathering in the current inspector general, who was appointed by the Postal Board of Governors. This new designation would give the Inspector General more independence from the Postal Service. UPS also supports providing the Inspector General the authority to appoint the auditors of the Postal Service.

TITLE II

Section 201

No comments.

Section 202

UPS supports using the date of the postmark as the date of appeal in connection with the closing or consolidation of post offices. This provision will give the PRC an adequate opportunity to consider post office closings, and will ensure that a community's right to appeal is not abrogated because of the Postal Service's own failure to provide timely service.

Further, the revision proposes to vest the authority to lead U.S. delegations at inter-governmental postal organizations with the U.S. Trade Representative instead of the

Postal Service. Currently, the Postal Service is in the position to shape international law to suit its own ends by entering into agreements that give preference to the Postal Service in the provision of competitive products. HR 22 would also prohibit the Postal Service from entering into agreements with foreign governments or foreign post offices that give special preference to the Postal Service in the provision of competitive products.

UPS supports designating the U.S. Trade Representative to represent the U.S. at intergovernmental agencies, including at the Congress of the Universal Postal Union (UPU) Congress. UPS urges the Subcommittee to ensure that proper mechanisms are in place so that the USTR represents the entire spectrum of U.S. businesses at these agencies, and not just the Postal Service.

This provision is potentially critical because the next UPU Congress is set to meet in August of 1999 in Beijing, China. If this legislation is not acted on immediately, the Postal Service will again be permitted to advocate measures solely in its own interests rather than in the interests of the entire American public at this intergovernmental organization when it establishes regulations again for the next five years. Proposals for the 1999 Congress must be in the hands of the International Bureau of the UPU by February 23, 1999 – six months prior to the opening of the UPU. The time is now to resolve this basic flaw in the Postal Reorganization Act of 1970.

TITLE III

No comments.

TITLE IV

Section 401

UPS opposes removing Treasury control of Postal Service banking.

Section 402

UPS opposes removing Treasury oversight from Postal Service investment authority with respect to competitive products. UPS opposes granting the Postal Service the ability to invest in equities of private companies.

Section 404

UPS opposes removing control of the Treasury from Postal Service financial borrowing decisions. UPS opposes the separation of the Postal Service's financial institutions from the federal government because the Postal Service is first and foremost a government agency. There is no fool-proof way to guarantee that the public and the market will view the Postal Service's competitive products separate and distinct from its monopoly. In other words, "full faith and credit" can never in reality be separate and distinct from the Postal Service because it is a government entity.

Sections 403,405

The establishment of the Postal Service Competitive Products Fund requires the Postal Service to track revenues and expenditures of competitive products separately and deprives obligations incurred by the fund of the full faith and credit of the United States. UPS supports this approach and also agrees that if there is to be a separate private law corporation, owned by the Competitive Products Fund, that corporation ought to be self-sufficient – succeeding or failing on its own merits.

However, the revision permits the Competitive Products Fund to borrow funds from the Postal Service's General Fund (monopoly revenues), which undercuts the goal of eliminating the Postal Service's advantage in obtaining favorable interest rates. Allowing the Competitive Products Fund to borrow working capital (which represents substantial funds) from the General Postal Service Fund subject only to Treasury oversight breaches the firewall between competitive and non-competitive services. Treasury oversight will undoubtedly focus on financial issues rather than on issues of fairness and avoiding cross-subsidy. Similarly, the Postal Service could use monies from the Competitive Services Fund to (a) purchase the stock of private companies (including companies which compete the Postal Service), and (b) establish a separate subsidiary which could engage in joint ventures with the Postal Service to render postal services, including both non-competitive and competitive services, and also engage in non-postal activities which would furnish funds to cross-subsidize competitive products. This may be remedied by eliminating or modifying those provisions which create "chinks" in the firewall.

The legislative language must be clear in providing that only those revenues and receipts obtained from competitive services may be pledged as security for loans to the Competitive Products Fund. Establishing a separate fund for competitive revenues and expenses will not be meaningful if it is limited to financial and accounting matters. This will not ensure that cross-subsidy will be eliminated.

These sections also require the PRC to determine the net value of postal assets and liabilities currently employed in providing competitive products. The vast majority of the Postal Service's assets are incurred jointly in providing competitive and non-competitive services. The extent to which postal resources are used for competitive as opposed to non-competitive services is not static, but rather changes from time to time. Only

complete organizational separation – breaking off competitive services into a separate legal entity, which operates completely independently of the Postal Service – could possibly permit a realistic determination of the value of the assets used to provide competitive products.

UPS supports subjecting the Postal Service to taxation on all of its competitive products. While UPS maintains that government should not compete with the private sector where the public is well-served by private enterprise, if government does enter the private marketplace, it should be subject to the same burdens and regulations as private business. Subjecting the Postal Service to taxation on its competitive products is a major step toward creating a level playing field with the private sector. Criteria should be set out so that any competitive activity and any non-incidental use of assets for competitive activities subjects the Postal Service to the same obligations and burdens that a private company would confront.

Great care must be taken in drafting language to ensure that the Postal Service does not receive advantageous treatment at the expense of its competitors.

TITLE V

No comments.

TITLE VI

Section 601

UPS supports requiring the Postal Service to provide change of address and mail forwarding for customers of Commercial Mail Receiving Agents (CMRAs), just as it provides these services to all other postal customers. The mandate of the Postal Service is to provide universal service at uniform rates to all citizens, and therefore it should be required to provide this service to all customers. The Postal Service has taken an aggressive stand in competing head to head with small businesses around the country. The function of the Postal Service is not to drive the small entrepreneurial businessmen and women of this country out of business.

Section 602

No comments.

Section 603

Strengthening the powers and authority of the PRC is essential for true postal reform. UPS is greatly encouraged by this provision, which increases the authority of the PRC by granting it subpoena authority in all evidentiary hearings on postal services, rate cases,

complaints and audit proceedings. Requiring the PRC to investigate all complaints and giving it the power to adjust rates to lawful levels if the annual audit indicates that the Postal Service's rates violate the statutory requirements is a giant step in the right direction.

UPS has spent nearly thirty years pressing its case before the PRC during rate proceedings. During that time, it has become abundantly clear that the PRC currently lacks sufficient authority to require the Postal Service to provide in a timely way the information needed to make informed and meaningful decisions. This lack of power is a fundamental flaw in the Postal Reorganization Act of 1970 and must be corrected.

The major component of the proposed revision is that the Postal Service's participation in competitive markets must be, to the maximum extent possible, on the same terms and conditions as faced by private sector competitors. When the Postal Service enters into competitive operations, it must not leverage captive customer revenues in efforts to finance these competitive ventures.

UPS supports the firewalls established by the revision between the competitive and non-competitive products to ensure that the Postal Service does not subsidize its competitive products with revenues generated from its non-competitive products. If a competitive product persistently fails to cover its attributable costs, or persistently fails to contribute to institutional costs, UPS supports granting the PRC the authority to order such product's withdrawal. However, UPS is concerned that the audit authority granted to the PRC is after the fact review; it may take place only after there has already been substantial damage to private sector competitors and consumers.

Section 604

UPS understands that the Postal Service believes it must have the ability to offer volume discounts and negotiated service agreements. However, UPS believes that such authority is inconsistent with the Postal Service's obligations as a government agency not to discriminate in favor of certain mailers. If it is permitted to offer volume discounts, the discounted rates must cover attributable costs and bear a reasonable proportion of institutional costs.

The revision would permit the Postal Service to negotiate volume discounts and special contractual rates without any showing of cost savings to justify the discounts, subject only to the requirement that the rates cover attributable costs; there would be no need to make any contribution to institutional costs. This not only violates economic efficient pricing theories, but also creates an enormous temptation for the Postal Service to target particular competitors for elimination by "cherry picking" their best customers. This may be remedied by requiring all rates, including volume discounts, to comply with all of the requirements applicable to other competitive products.

The revision requires that the Postal Service's competitive products cover attributable costs and that competitive products as a whole collectively bear the same proportion of institutional costs as

non-competitive products. While we do not advocate that every competitive service must contribute to institutional costs equally, some minimum percentage contribution for institutional costs (such as half the systemwide average, for example) should be required for every competitive product. This would eliminate the potential abuse by the Postal Service of selectively siphoning large or profitable accounts at the expense of smaller shippers who would be left to bear an inflated portion of overhead costs. Once again, the Postal Service's primary mission is to provide universal service at universal rates to all consumers, not simply those it feels are more profitable.

TITLE VII

Section 701

No comments.

Section 702

UPS supports the elimination of the Postal Service as a regulator in areas in which it is also engaged in competition.

Section 703

UPS supports relaxing the scope of the letter mail monopoly by permitting the American public to use the private carrier of their choice if they pay at least \$2. The General Accounting Office (GAO) has found that "the impact of reducing the scope of the mail monopoly ... would not significantly affect the Postal Service's ability to provide affordable universal service..." This provision is an excellent step in the direction of leveling the playing field and increasing real consumer choice. This provision has the effect of forcing the Postal Service to become more efficient and thus, serving the mailing public better.

Section 704

UPS supported the provision in the original version of HR 22 which provided that the Postal Service conduct a demonstration project to gather data on the feasibility of allowing non-postage items to be deposited in private mailboxes. The Postal Service has asked Congress to allow them to be more business-like and offer competitive products. To that end, where the Postal Service is using the mailbox for the delivery of competitive products, so too should private carriers be permitted to use the mailbox for delivery. In the alternative, if private competitors are not permitted to use the mailbox for delivery, the Postal Service should also be prohibited from using the mailbox for competitive product delivery.

UPS delivers to every address – meaning every house – not every mailbox. The Postal Service delivers to every mailbox, which in many cases can be several miles from the recipient's actual house. Therefore, the Postal Service benefits from "delivering" a

package to the mailbox rather than the house. It should be noted that the Postal Service is the only postal agency in the world that enjoys complete control over the mailbox or mail receptacle.

TITLE VIII

No comments.

TITLE IX

No comments.

TITLE X

The proposed revisions represent a significant improvement over the original bill's ratemaking provisions. Retaining the current ratemaking factors for the baseline rate case represents an essential element of a rational, fair, and equitable ratemaking scheme. However, UPS remains concerned about the following aspects of the ratemaking provisions:

The establishment of a dual ratemaking system -- Establishing an indexed rate cap for non-competitive services while the Postal Service may unilaterally set rates for competitive services does not sufficiently protect against cross-subsidy. This could be remedied by extending rate indexing to all services, both competitive and non-competitive, and requiring that rate changes within the rate cap be made even-handedly for all services, at the same time.

Reducing the PRC's role in the ratemaking process from that of an active participant to that of an after-the-fact policeman -- This creates a situation in which rates that do not comply with statutory requirements could be in effect for substantial periods of time before they could be changed. This could be cured by providing for the PRC's annual reviews to be prospective in nature. For example, the Postal Service could be required to submit its budget projections to the PRC along with its planned rate changes when the Postal Service makes its annual budget submissions, with the PRC making a determination that the planned rate changes meet the statutory attributable cost recovery and institutional cost contribution requirements.

The provision that competitive services may be subsidized by monopoly revenues if the competitive service is subject to a universal service obligation -- All competitive services are now subject to the universal service obligation, and almost certainly would continue to be subject to it. Thus, this provision creates an enormous breach in the firewall between competitive and non-competitive products. That can be easily remedied by deleting the provision altogether.

The market test provisions would allow for rates below attributable costs and, therefore, do not contain adequate protections for users and competitors of the Postal Service. All competitive products, even those that are being tested, should be required to cover attributable costs plus make a contribution (UPS suggests one-half the system-wide average) to institutional costs.

The proposed changes give the PRC needed authority over international postal rates. A perfect example of the Postal Service's abuse in the international arena can be seen in a recent article in *Business Mailers Review* (BMR). BMR reported that a 1998 Postal Service Marketing Plan showed that data for international services had been misreported in the 1996 Cost and Revenue Analysis (CRA) and the 1997 Rate Case. The Marketing Plan showed cost coverage for the International Business Unit (IBU) products would be 57%. The Postal Service discounted the BMR conclusion stating that the data reported in the marketing plan was wrong. Without proper oversight on international rates and services, the Postal Service will continue to abuse its power to set rates without any accountability.

UPS supports expressly subjecting the Postal Service to the fullest extent of the antitrust provisions of the Clayton Act, the Sherman Act, and the Federal Trade Commission Act. UPS supports explicitly expanding the applicability of other laws to the Postal Service, including the Lahnham Act. Several recent court decisions on this subject have ruled against the Postal Service in these areas.¹ The proposed revision is simply codifying what the courts have held.

UPS supports: subjecting the Postal Service to the same rules and regulations regarding parking and vehicular operations as faced by private companies (and as to any assets used, other than on an incidental basis, for competitive activities); subjecting the Postal Service's international products to the same customs and other laws as faced by private companies; and, the application of local zoning, planning, and land use regulations and building codes to the Postal Service. The above requirements represent a move in the direction of holding the Postal Service accountable for its activities. By requiring the Postal Service to abide by the same rules as its competitors, the Subcommittee has begun to level the playing field between the Postal Service and its private sector competitors.

¹ *Federal Express Corporation v. U.S. Postal Service*, 959 F. Supp. 832, 43 U.S. PQ 2d 1254 (W.D. Tenn., March 21, 1997), appeal pending (4th Cir.); *U.S. v. Quick International Courier, Inc.*, 131 F.3d 770 (8th Cir. December 22, 1997).

Conclusion

UPS would like to acknowledge the fact that the Chairman of the Subcommittee over the past three and a half years has undertaken a much needed discussion of postal issues. This has been the first real debate of the issue in over 25 years. UPS greatly welcomes this meaningful debate and is grateful to the Chairman for investigating what we believe is a critical issue to consumers and businesses alike.

UPS appreciates the opportunity to participate in the development of this important legislation, and commends the Subcommittee for its direction and efforts. We have tried to suggest ways in which further improvements may be accomplished. We remain committed to working with the Subcommittee to produce true postal reform for the benefit of the entire American public. If further elaboration of any comments contained herein is desired, or if we can be of further assistance, please do not hesitate to contact us.